



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

February 25, 2014

MEMORANDUM

To: Senator Leibham

From: Mark D. Knukel, Sr. Legislative Attorney, (608) 266-0131

Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2013 SB-566** (LRB-3078/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 10, 2014

TO: Mark Kunkel
Joseph T. Kreye
Legislative Reference Bureau

FROM: Robert Schmidt
Department of Revenue

SUBJECT: Technical Memorandum on 2013 SB 566 Relating to State 911
Telecommunications Services, Police and Fire Protection Fee Imposed on
Certain Communications Services, Granting Rule-Making Authority, and Making
An Appropriation

The Department of Revenue has the following concern with the bill:

(1) Since county and municipal aid payments under s. 79.035 are only partially funded from the police and fire protection fee, the amendment under Section 11 of the bill is not needed. In fact, the amendment could prevent municipalities and counties from depositing any portion of their county and municipal aid payment in the Local Government Investment Pool.

(2) To ensure that a service provider or retailer is not liable for Wisconsin sales or use tax on the 911 fee, the service provider or retailer should be required to separately state the 911 fee on its invoice to its customer. Current sales and use tax law excludes certain taxes from the purchase price and sales price when the taxes are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser (see sec. 77.51 (12m) (b) 3m. and (15b) (b) 3m). This correction can be accomplished by amending proposed sec. 256.35(3)(bm)1. and 2. of the bill to read as follows (Section 35, page 13, line 20 and page 14, line 5):

256.35 (3) (bm) Fee imposed. 1. Except as provided in subd. 2., a communications provider shall impose a monthly fee of \$0.40, subject to any adjustment under par. (cm), on each communications service connection, including a communications service provided via a voice over Internet protocol connection. If a communications provider provides multiple communications service connections to a service user, the communications provider shall impose a separate fee under this subdivision on each of the first 10 connections and one additional fee for each 10 additional connections per billed account. A communications provider ~~may shall~~ list the fee separately from other charges on a service user's bill, and ~~if a communications provider does so, the communications provider shall~~ identify the fee as "state 911 fee." Any partial payment of a fee by a service user shall first be applied to any amount the service user owes the communications provider for communications service.

2. A communications provider that offers a prepaid wireless telecommunications plan, or a retailer that offers such a plan on behalf of a communications provider, shall impose a fee equal to \$0.20, subject to any adjustment under par. (cm), on each retail transaction for such a plan that occurs in this state. A communications provider or retailer ~~may shall~~

state the amount of the fee separately on a bill for the retail transaction; and if a communications provider or retailer does so, the communications provider or retailer shall identify the fee as "state 911 fee."

(3) The bill requires the PSC to notify communications providers and sellers by October 1 of any changes in the fee that will be effective on the following January 1. (Section 256.35(3)(cm)4., of the proposed bill in Section 36, page 15, lines 12-16). In order for DOR to facilitate these changes in collecting on behalf of the PSC, DOR will need the same notice. The department suggests amending the bill to read as follows (Section 36, page 15, lines 12-16):

4. No later than October 1 of each year, the commission shall notify the department and communications providers and sellers who offer prepaid wireless on behalf of communications providers of any order issued under subd. 1. for that year and any decrease or increase to the fee allowed under par. (bm) that is specified in the order shall be effective on January 1 of the following year.

(4) DOR generally has collection powers for all other delinquent taxes and fees that it administers. Similarly, with all other taxes and fees that DOR administers, delinquent debts accrue interest and penalties, which further serve as incentives to resolve the delinquency. There are no negative consequences for nonpayment of this fee; therefore there is no incentive for delinquent taxpayers to resolve their debt related to these fees. The department suggests creating sec. 256.35(3) (dm) 2.d., Stats., to read as follows (Section 37 of the bill, page 16 - insert after line 9):

d. Exercise the powers under ss. 77.60 and 77.62, Stats.

(5) The effective date of this bill is the later of July 1, 2014 or the day after publication. If the effective date is after July 1, 2014, service providers and sellers will not have enough time to receive notification of the change and make needed changes in their billing systems. In addition, if the effective date is not on the first day of a month, service providers and sellers will need to bill and collect both the police and fire protection fee and the proposed new fee in the transition month. In order for service providers and sellers to change their systems to reflect the proposed fee, we suggest that the effective date be on the first day of the 4th month beginning after publication.

If you have any questions regarding this technical memorandum, please contact Daniel Huegel at 266-5705.

cc: Senator Joe Leibham